

ESTTA Tracking number: **ESTTA532316**

Filing date: **04/15/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Simply Orange Juice Company
Granted to Date of previous extension	04/14/2013
Address	2659 Orange Avenue Apopka, FL 32703 UNITED STATES
Attorney information	Kathleen E. McCarthy 1185 Avenue of the Americas New York, NY 10036 UNITED STATES kmccarthy@kslaw.com, nytrademarks@kslaw.com, ebrown@kslaw.com, bbaber@kslaw.com

Applicant Information

Application No	85536854	Publication date	10/16/2012
Opposition Filing Date	04/15/2013	Opposition Period Ends	04/14/2013
Applicant	S&D Coffee, Inc. 300 Concord Parkway South Concord, NC 28027 UNITED STATES		

Goods/Services Affected by Opposition


Class 030. All goods and services in the class are opposed, namely: Tea; Tea bags; Tea in liquid concentrate form; Beverages made of tea; Beverages with a tea base; Black tea; Chai tea; Fruit teas; Green tea; Herb tea; Herbal tea; Iced tea; Japanese green tea; Oolong tea; Tea for infusions; Tea-based beverages; Tea-based beverages with fruit flavoring
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Grounds for Opposition


False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2692046	Application Date	10/12/2000
Registration Date	03/04/2003	Foreign Priority Date	NONE

Word Mark	SIMPLY ORANGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2001/04/30 First Use In Commerce: 2001/04/30 NOT FROM CONCENTRATE, 100% PURE, CHILLED ORANGE JUICE		

U.S. Registration No.	3121935	Application Date	11/11/2004
Registration Date	07/25/2006	Foreign Priority Date	NONE

Word Mark	SIMPLY LEMONADE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2006/03/01 First Use In Commerce: 2006/03/01 Beverages, namely, Fruit drinks, Fruit juices		

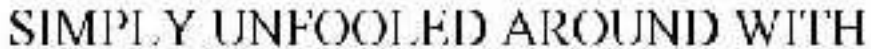
U.S. Registration No.	3163864	Application Date	02/15/2005
Registration Date	10/24/2006	Foreign Priority Date	NONE

Word Mark	SIMPLY LIMEADE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2006/03/01 First Use In Commerce: 2006/03/01 LIME JUICE BEVERAGES CONSISTING OF WATER AND SWEETENERS, NOT FROM CONCENTRATE

U.S. Registration No.	3329279	Application Date	04/28/2006
Registration Date	11/06/2007	Foreign Priority Date	NONE


Word Mark	SIMPLY UNFOOLED AROUND WITH
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2003/04/30 First Use In Commerce: 2003/04/30 Fruit Drinks and Juices

U.S. Registration No.	3399381	Application Date	06/30/2004
Registration Date	03/18/2008	Foreign Priority Date	NONE


Word Mark	SIMPLY GRAPEFRUIT
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2007/09/01 First Use In Commerce: 2007/09/01 Grapefruit juice beverages consisting of water and non-caloric sweetners, not from concentrate

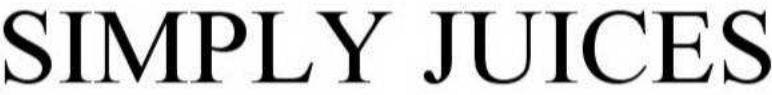
U.S. Registration No.	3410211	Application Date	02/17/2003
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Registration Date	04/08/2008	Foreign Priority Date	NONE
Word Mark	SIMPLY APPLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2007/09/01 First Use In Commerce: 2007/09/01 non-alcoholic beverages, namely, fruit drinks and fruit juices		

U.S. Registration No.	4136164	Application Date	07/20/2010
Registration Date	05/01/2012	Foreign Priority Date	NONE
Word Mark	SIMPLY CRANBERRY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2012/01/23 First Use In Commerce: 2012/01/23 Fruit drinks and fruit juices		

U.S. Registration No.	4175984	Application Date	09/29/2009
Registration Date	07/17/2012	Foreign Priority Date	NONE
Word Mark	SIMPLY CRANBERRY COCKTAIL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2012/01/23 First Use In Commerce: 2012/01/23 Fruit drinks and fruit juices		

U.S. Registration No.	4318837	Application Date	05/23/2012
Registration Date	04/09/2013	Foreign Priority Date	NONE
Word Mark	SIMPLY DRINKS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2012/12/31 First Use In Commerce: 2012/12/31 non-alcoholic beverages, namely, fruit drinks and fruit juices		

U.S. Registration No.	4100614	Application Date	03/24/2005
Registration Date	02/21/2012	Foreign Priority Date	NONE
Word Mark	SIMPLY JUICES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2000/07/00 First Use In Commerce: 2000/07/00 fruit juice		

Attachments	76145591#TMSN.gif (1 page)(bytes) 78515317#TMSN.jpeg (1 page)(bytes) 78567421#TMSN.jpeg (1 page)(bytes) 78872334#TMSN.jpeg (1 page)(bytes) 78443660#TMSN.jpeg (1 page)(bytes) 85088704#TMSN.jpeg (1 page)(bytes) 77836913#TMSN.jpeg (1 page)(bytes) 85632571#TMSN.jpeg (1 page)(bytes) 78593984#TMSN.jpeg (1 page)(bytes) SIMPLY TEA Opposition.pdf (7 pages)(416132 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Emily B. Brown/
Name	Emily B. Brown
Date	04/15/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SIMPLY ORANGE JUICE COMPANY,)	
)	
Opposer,)	
)	OPPOSITION NUMBER
)	
v.)	
)	
)	
S&D COFFEE, INC.,)	_____
)	
Applicant.)	

OPPOSITION

SIMPLY ORANGE JUICE COMPANY (“SOJC” or “Opposer”), a Florida corporation having a place of business at 2659 Orange Avenue, Apopka, Florida 32703 believes it would be damaged by registration of the mark SIMPLY TEA (“Applicant’s Alleged Mark”) for “tea; tea bags; tea in liquid concentrate form; beverages made of tea; beverages with a tea base; black tea; chai tea; fruit teas; green tea; herb tea; herbal tea; iced tea; Japanese green tea; oolong tea; tea for infusions; tea-based beverages; [and] tea-based beverages with fruit flavoring” in International Class 30 (“Applicant’s Goods”), which mark is the subject of application Serial Number 85/536,854 (the “Application”), filed on February 8, 2012 by S&D Coffee, Inc. (“Applicant”) and published for opposition in the Official Gazette of October 16, 2012, and by and through its undersigned attorneys and in accordance with Rules 2.101 through 2.104 of the Trademark Rules of Practice, hereby opposes the same.

The grounds for this Opposition are as follows:

1. By the Application, Applicant seeks to register Applicant's Alleged Mark as a mark for Applicant's Goods. The Application is based on intent to use, and therefore claims no date of first use.

2. Opposer is a Florida corporation engaged in the business of manufacturing premium fruit juices and juice drinks.

3. Opposer has adopted and used, since at least as early as 2001, a number of marks that include the word SIMPLY for and in connection with the promotion, advertising, and sale of its beverage products.

4. Opposer has used in interstate commerce and is and has been at all times pertinent hereto (including since long prior to the filing date of the Application), the owner of all right, title, and interest in and to a number of marks that include the word SIMPLY, including the marks SIMPLY ORANGE, SIMPLY APPLE, SIMPLY GRAPEFRUIT, SIMPLY LEMONADE, SIMPLY LIMEADE, SIMPLY CRANBERRY COCKTAIL, SIMPLY CRANBERRY, SIMPLY UNFOOLED AROUND WITH, SIMPLY JUICES and SIMPLY DRINKS (collectively, "Opposer's SIMPLY Marks") for and in connection with beverage products in International Class 32, including but not limited to 100% pure, chilled orange juice, fruit drinks and fruit juices, grapefruit juice beverages, and lime juice beverages ("Opposer's Goods").

5. Opposer is the owner of several federal trademark registrations, all for fruit juices and/or juice beverages in International Class 32, including the following:

- Reg. No. 2,692,046, issued on March 4, 2003 for the mark
SIMPLY ORANGE;

- Reg. No. 3,121,935, issued on July 25, 2006 for the mark
SIMPLY LEMONADE;
- Reg. No. 3,163,864, issued on October 24, 2006 for the
mark SIMPLY LIMEADE;
- Reg. No. 3,329,279, issued on November 6, 2007 for the
mark SIMPLY UNFOOLED AROUND WITH;
- Reg. No. 3,399,381, issued on March 18, 2008 for the mark
SIMPLY GRAPEFRUIT;
- Reg. No. 3,410,211, issued on April 8, 2008 for the mark
SIMPLY APPLE;
- Reg. No. 4,100,614, issued February 21, 2012 for the mark
SIMPLY JUICES;
- Reg. No. 4,136,164, issued May 1, 2012 for the mark
SIMPLY CRANBERRY;
- Reg. No. 4,175,984, issued July 17, 2012 for the mark
SIMPLY CRANBERRY COCKTAIL; and
- Reg. No. 4,318,837, issued April 9, 2013 for the mark
SIMPLY DRINKS.

6. Opposer has used one or more of Opposer's SIMPLY Marks for and in connection with Opposer's Goods in interstate commerce in and throughout the United States continuously and extensively since at least as early as April 30, 2001. Opposer's registrations for the marks SIMPLY ORANGE, SIMPLY LEMONADE and SIMPLY LIMEADE are incontestable.

7. As a result of the long, widespread, and extensive use by Opposer of Opposer's SIMPLY Marks, Opposer's SIMPLY Marks are of great value to Opposer in connection with the offering of Opposer's Goods. Opposer's SIMPLY Marks individually and collectively serve to identify and distinguish Opposer's Goods from the goods, services, and businesses of others, symbolize the goodwill of Opposer's business, and are well known.

8. Upon information and belief, Applicant is unable to establish, with respect to Opposer's use of Opposer's SIMPLY Marks, priority of use or priority of rights in the United States in connection with Applicant's Alleged Mark.

9. Upon information and belief, Applicant's Goods and Opposer's Goods are of similar types, are offered or may be offered through the same, substantially the same, and/or related channels of trade, to the same, substantially the same, and/or related classes of purchasers and are or may be advertised, marketed and promoted through the same media channels.

10. Upon information and belief, Applicant's Alleged Mark, when used in connection with Applicant's Goods, so resembles Opposer's SIMPLY Marks as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's Goods, with respect to Opposer's sponsorship thereof or connection or affiliation therewith, and/or in other ways.

11. Upon information and belief, Applicant's Alleged Mark so closely resembles Opposer's SIMPLY Marks that potential purchasers of the goods intended to be offered under Applicant's Alleged Mark would be likely to believe that Opposer is the source of such goods, or that Opposer has authorized, sponsored, approved of, or in

some other manner associated itself with Applicant's Goods, thereby creating a likelihood of confusion, deception or mistake, all to the damage of Opposer.

12. Opposer would be damaged by registration of Applicant's Alleged Mark because such registration would constitute prima facie evidence of Applicant's exclusive right to use Applicant's Alleged Mark for and in connection with Applicant's Goods, which would be inconsistent with and detrimental to Opposer's established and superior rights in Opposer's SIMPLY Marks and the registrations of Opposer's SIMPLY Marks.

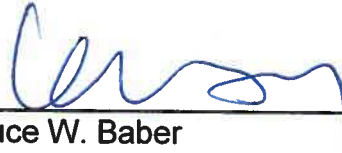
13. Applicant's Alleged Mark falsely suggests a connection or affiliation with Opposer and Applicant is therefore not entitled to registration of Applicant's Alleged Mark.

The Patent and Trademark Office is authorized to deduct the filing fees of three hundred dollars (\$300.00), and any other fees necessary in connection with the filing of this Opposition, from the deposit account of King & Spalding LLP, Opposer's undersigned counsel, account number 11-0980.

WHEREFORE, Opposer Simply Orange Juice Company respectfully prays that the application of S&D Coffee, Inc., Serial Number 85/536,854, filed February 8, 2012 for registration of the mark SIMPLY TEA for "tea; tea bags; tea in liquid concentrate form; beverages made of tea; beverages with a tea base; black tea; chai tea; fruit teas; green tea; herb tea; herbal tea; iced tea; Japanese green tea; oolong tea; tea for infusions; tea-based beverages; [and] tea-based beverages with fruit flavoring" in International Class 30 be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted, this 15th day of April, 2013

KING & SPALDING LLP



Bruce W. Baber
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Emily B. Brown

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Attorneys for Opposer
SIMPLY ORANGE JUICE COMPANY

CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that I have this day served the foregoing Opposition on the Applicant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the attorney of record for the Applicant as follows:

Mr. Jack B. Hicks
Womble Carlyle Sandridge & Rice, LLP
PO Box 7037
Atlanta, Georgia 30357-0037

This 15th day of April, 2013.

A handwritten signature in blue ink, appearing to read "Emily B. Brown", is written over a solid black horizontal line.

Emily B. Brown